

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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YORKSHIRE TOWERS COMPANY, L.P. and  
YORKSHIRE TOWERS TENANTS ASSOCIATION,

13 - CV - 1757 (JMF)

Plaintiffs,

ECF Case

-against-

UNITED STATES DEPARTMENT OF  
TRANSPORTATION, RAY LAHOOD, in his capacity  
as Secretary of the United States Department of  
Transportation, FEDERAL TRANSIT  
ADMINISTRATION, PETER M. ROGOFF, in his  
capacity as Administrator of the Federal Transit  
Administration, METROPOLITAN  
TRANSPORTATION AUTHORITY, FERNANDO J.  
FERRER, in his capacity as Acting Chairman of the  
Metropolitan Transportation Authority, NEW YORK  
CITY TRANSIT AUTHORITY, THOMAS F.  
PRENDERGAST, JR., in his capacity as the President of  
the New York City Transit Authority and  
METROPOLITAN TRANSPORTATION AUTHORITY  
CAPITAL CONSTRUCTION COMPANY, MICHAEL  
HORODNICEANU, in his capacity as President of  
the Metropolitan Transportation Authority Capital  
Construction Company,

Defendants.

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**PLAINTIFFS' NOTICE OF MOTION  
FOR A PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs will move this Court before the Honorable Jesse M. Furman at the United States Court House, 500 Pearl Street, Courtroom 1105, New York, New York, on a date and time to be determined by the Court preliminarily enjoining the Defendants, their employees, agents and contractors from taking any steps or actions to commence, accelerate, or proceed with a limited portion of phase one of the four phases of the Second Avenue Subway project ("SAS")

(less than 1% order of magnitude of total phase one costs) (the “Limited Portion”) pertaining to, or in furtherance of the construction of the north entrance to the 86<sup>th</sup> Street station, consisting of two entrances with two escalators each with planned siting midblock in the north sidewalk of 86<sup>th</sup> Street east of Second Avenue (the “Proposed Action”), without suspension of the far greater project activities not directly affected,

Plaintiffs allege that, in violation of the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* (“NEPA”), the Council of Environmental Quality implementing NEPA regulations under 40 C.F.R. 1500.1 *et seq.* and United States Department of Transportation implementing NEPA regulation governing the issuance of a limited scope Supplemental Environmental Impact Statement (“Limited Scope SEIS”) under subparagraphs (a)(2), (f)(3) of 23 C.F.R. 771.130, as codified under 23 U.S.C. § 139(l) (2) for public transportation capital projects, and the Administrative Procedure Act, 5 U.S.C. § 706, Defendants have failed to evaluate significant new information and circumstances regarding the Proposed Action that directly involve serious safety hazards in seven distinct categories, an additional seven related areas of conflicts with local law and requirements, and improvements advanced by the 86<sup>th</sup> Street Community’s design team bearing on the Proposed Action that resolve them.

For these and other reasons, the entire Coalition of Upper East Side Elected Officials, led by United States Congresswoman Carolyn B. Maloney, have not only opposed the Defendants’ Proposed Action, but have unanimously supported the improvements to the Proposed Action that resolve the safety hazards and related violations of local law and requirements as a “win-win” for the 86<sup>th</sup> Street Community and the Defendants. Defendants’ continuing delay and inaction in fully evaluating these adverse impacts in accordance with a Limited Scope SEIS will result in irreparable injury to the environment and harms the public interest.

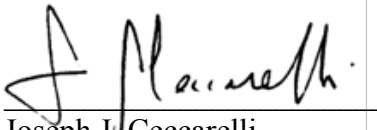
The issuance of preliminary injunction narrowly tailored to the Limited Portion serves to preserve the *status quo* pending the determination of the merits of this action for the issuance of a Limited Scope SEIS and related relief, and would not delay the latest projected completion date for entire Phase One of the SAS more than three and one-half year's away in December 2016.

In support of their motion, Plaintiffs submit the accompanying Memorandum of Law, declarations and exhibits.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 6.1(b) papers in opposition, if any, must be served 14 days after service of the moving papers, or at such other time as the court directs.

Dated: New York, New York  
April 18, 2013

CECCARELLI WEPRIN PLLC

By:   
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Joseph J. Ceccarelli  
Two Wall Street  
New York, New York 10005  
(212) 227-4848  
jceccarelli@cecwep.com

Attorneys for Plaintiffs  
*Yorkshire Towers Company L.P. and*  
*Yorkshire Towers Tenants Association*

To: Preet Bharara  
United States Attorney for the  
Southern District of New York  
Attn: Joseph Anthony Pantoja, A.U.S.A.  
United States Attorney's Office  
86 Chambers Street  
New York, New York 10007  
(212) 637-2200

*Attorneys for Federal Defendants*

Philip Elias Karmel, Esq.  
Bryan Cave LLP  
1290 Avenue of the Americas  
New York, New York 10104  
(212) 541-2000

*Attorneys for MTA Defendants*